

1986

Bountiful City v. Barbara Marek : Brief of Respondent

Utah Court of Appeals

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BRIEF

AGENT

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DOCKET NO. 860278 IN THE UTAH COURT OF APPEALS

BOUNTIFUL CITY)	
Plaintiff/Respondent)	Case No. 860278-CA
vs.)	Category No. 2
BARBARA MAREK)	
Defendant/Appellant)	

BRIEF OF RESPONDENT

Appeal from the Judgment of the Second Judicial
District Court, Davis County, State of Utah,
Honorable Rodney S. Page, presiding.

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745 South Main Street
Bountiful, Utah 84010

BARBARA MAREK
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Salt Lake City, Utah 84127
Appellant

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Court of Appeals

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IN THE SUPREME COURT OF THE STATE OF UTAH

BOUNTIFUL CITY)	
Plaintiff/Respondent,)	Case No. 860278-CA
vs.)	
BARBARA MAREK,)	
Defendant/Appella)	

BRIEF OF RESPONDENT

NATURE OF THE CASE

The above action was brought against Defendant on January 31, 1986, for driving a motor vehicle with no Utah registration.

DISPOSITION IN LOWER COURT

On April 18, 1986 Defendant was tried for the offense of driving a motor vehicle with no Utah registration. The trial Court took the matter under advisement, and a judgment of guilt and sentence was imposed on May 5, 1986. On October 31, 1986 the District Court affirmed the judgment of the lower court and remanded the case for sentencing.

RELIEF SOUGHT ON APPEAL

Respondent seeks an affirmance of the Circuit Court's ruling and the District Court's finding, as well as a denial of relief sought by Appellant.

STATEMENT OF FACTS

The record indicates that on January 31, 1986, defendant was cited for driving a motor vehicle not registered in accordance with the laws of the State of Utah. A formal information charging the Defendant with NO UTAH REGISTRATION was filed on February 14, 1986. The trial was set for April 18, 1986 and the Defendant received notice of that date in court on February 24, 1986. The Defendant made a demand for trial by jury on March 6, 1986. That request was denied by the court.

On April 18, 1986 trial was held in the Fourth Circuit Court, Bountiful Department. Bountiful City Police Officer Carl Krall was sworn and examined by the City Prosecutor. Defendant then had an opportunity to cross-examine the officer's testimony. The defendant was advised of her right to testify. The defense called Richard Marek to testify, and he refused to swear to tell the truth. The court refused to hear Mr. Marek's testimony without the oath. The defendant then called Officer Krall to testify, and then Mr. Marek agreed to affirm to tell the truth and he testified for the defense.

The Court took the matter under advisement and rendered a guilty judgment on May 5, 1986. Defendant appealed to the Second Judicial District Court, County of Davis, and on October 31, 1986 the District Court affirmed the judgment of the lower court and remanded the case to the trial court for sentencing.

SUMMARY OF ARGUMENT

No deprivation of constitutional rights occurred where the appellant was found guilty of violating a valid city ordinance. Respondent, Bountiful City has the right to legislate on the same subject as a state statute by an express grant of authority. There is no inconsistency that would invalidate the city ordinance. The fact that the city ordinance prescribes a smaller penalty than the state statute on the same subject does not invalidate the municipal law. Rights of the accused to a trial by jury were not available for violation of an infraction which can not be punished by imprisonment.

The constitutional argument regarding use of gold and silver coin as the only tender in payment of debt is without merit.

ARGUMENT

POINT I

THERE IS NO RIGHT TO A JURY TRIAL FOR VIOLATION OF AN INFRACTION WHICH IMPOSES NO INCARCERATION

A defendant is not entitled to a jury trial for violation of a city ordinance which cannot be punished by incarceration. Utah Code Ann. Section 78-4-19, (1953, as amended) provides as follows: "All criminal actions before a circuit court arising under city ordinances shall be tried and determined without the intervention of a jury, except in cases where imprisonment may be made a part of the penalty."

A person convicted of an infraction may not be imprisoned, but may be subject to a fine. Utah Code Ann. Section 76-3-205, (1953 as amended). The rights of an accused to a jury trial are not violated where the offense is an infraction not punished by imprisonment.

The Bountiful City Traffic Code Section 8-2-104(a) which charged the defendant with improper registration was an infraction. The only penalty for violation of that Bountiful City Ordinance was payment of a fine. The appellant was never subject to punishment by imprisonment. The right to a jury trial is not available to a defendant charged with violation of a city ordinance which does not provide for punishment by incarceration.

POINT II

A MUNICIPAL ORDINANCE IS VALID WHERE THE PENALTY DOES NOT EXCEED THAT IMPOSED BY STATE LAW

Municipalities have the authority to enact rules and regulations consistent with the Traffic Rules and Regulations Act. Utah Code Ann. Section 41-6-16 (1953 as amended). Bountiful City Traffic Code Section 8-2-104(a) is consistent with Utah Code Ann. Section 41-1-18 regarding registration of vehicles. "In determining whether an ordinance is in 'conflict' with general laws, the test is whether the ordinance permits or licenses that which the statute forbids and prohibits, and vice versa...." Salt Lake City v. Kusse, 97 Utah 113, 93 P2d 671, 673 (Utah 1938). Adequate legislative authority exists for Bountiful City's enactment of Section 8-2-104(a) of the Bountiful City Traffic Code.

In the present case the Bountiful City ordinance does not permit action that the state statute prohibits. The municipal ordinance differs from the state regulation only in the area of penalties prescribed for failure to register a motor vehicle. The test for whether a municipal ordinance is repugnant to or in conflict with state law is not whether it provides different penalties for the same violation, but whether it permits something that the state statute forbids. The only restriction on municipal penalties that differ from state laws is that they cannot exceed that of state law. McQuillin, Municipal Corporations, Section 17.15, at page 326 (3rd ed. 1981).

The penalty in the Bountiful City ordinance is less than that imposed by the State. The city ordinance is an infraction with a fine as the only penalty, not to exceed five hundred dollars, the amount of fine for a class C misdemeanor. The state ordinance is a class B misdemeanor which imposes a fine of one thousand dollars or six months in jail. The court in Salt Lake City v. Allred, 437 P.2d 434, 437 (Utah 1968) found nothing wrong with allowing a local government to punish conduct as a misdemeanor which is a felony at the state level. Salt Lake City v. Allred, cited with approval 37 Am.Jur., Municipal Corporations, Section 165, p. 791, as follows:

A municipal ordinance is not in conflict with a statute authorizing its adoption because of a difference in penalties. Thus, further and additional penalties may be imposed by statute, without creating inconsistency and conversely, at least in some instances lesser penalties may be imposed by the ordinance for violation than by the statute without conflict.

Bountiful City had sufficient legislative authority to enact an ordinance regarding registration of motor vehicles and the penalty involved could be less restrictive than the state statute without being inconsistent. The city ordinance is valid when it relates to the same subject matter as the state statute and prescribes a smaller penalty. The information is not void because it charges the defendant with violation of a valid ordinance, lawfully enforceable by the city.

Appellant urges that due to the lesser penalty the city ordinance is invalid and violates the constitutional right to equal protection. As set forth in Allred 437 P.2d 434, the

Bountiful City ordinance which imposes a lesser penalty is lawfully enforceable by the city. Any assertion of constitutional violations based on validity of the ordinance is without merit.

CONCLUSION

The Bountiful City Ordinance regarding registration of motor vehicles is not in conflict with state statutes on the same subject. The city ordinance which prescribes a smaller penalty than state laws on the same subject matter is valid. No constitutional violations of due process or equal protection occurred where all proceedings were based on a valid city ordinance. The Circuit Court's finding of guilt and the District Court's affirmation of that judgment should be upheld.

CERTIFICATE OF DELIVERY

I hereby certify that I have hand delivered a true and correct copy of the above respondent's brief to:

The Utah Court of Appeals
230 South 500 East, Suite 300
Salt Lake City, UT 84102

I further certify that I have mailed a true and correct copy of the above respondent's brief to:

Barbara Marek
P. O. Box 27062
Salt Lake City, UT 84127

this 14th day of April, 1987.


DONNA G. DRAUGHON